

NEBRASKA ADMINISTRATIVE CODE

TITLE 303, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 14

**RETIREMENT SYSTEMS, PUBLIC EMPLOYEES
PUBLIC EMPLOYEES RETIREMENT BOARD**

**RULES AND REGULATIONS FOR
CAPPING OF RETIREMENT COMPENSATION**

Last Revision: September 23, 2013
Current Revision: December 7, 2013
Effective Date: June 5, 2017

NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 14 – CAPPING OF RETIREMENT COMPENSATION

NUMERICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>SECTION</u>
Scope of the Rule	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	001
Definitions	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	002
Conventions for Calculation of Final Average Compensation	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	003
Consistency of Reporting; Annualization and Proration	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	004
Covered Compensation	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	005

ALPHABETICAL TABLE OF CONTENTS

<u>SUBJECT</u>	<u>STATUTORY AUTHORITY</u>	<u>SECTION</u>
Consistency of Reporting; Annualization and Proration	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	004
Conventions for Calculation of Final Average Compensation	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	003
Covered Compensation	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	005
Definitions	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	002
Scope of the Rule	§§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503	001

NEBRASKA ADMINISTRATIVE CODE

TITLE 303 – PUBLIC EMPLOYEES RETIREMENT BOARD

CHAPTER 14 – CAPPING OF RETIREMENT COMPENSATION

001 Scope of the Rule

This rule governs the procedures for applying compensation limits contained in the School Employees Retirement System (School Plan) and Nebraska State Patrol Retirement System (Patrol Plan), and calculating the retirement annuity for the School Plan and Patrol Plan with respect to members who are eligible to receive a retirement benefit.

002 Definitions

002.01 For School Plan members, all terms used in this chapter which are defined in the School Employees Retirement Act, as clarified by the Rules and Regulations promulgated by the PERB, shall be so defined for purposes of this chapter unless the context otherwise clearly requires.

002.02 For Patrol Plan members, all terms used in this chapter which are defined in the Nebraska State Patrol Retirement Act, as clarified by the Rules and Regulations promulgated by the PERB, shall be so defined for purposes of this chapter unless the context otherwise clearly requires.

002.03 “Adjusted Compensation” means an amount equal to the member’s compensation for a plan year during the capping period as modified, if at all, pursuant to the applicable statutory capping provisions and/or 303 NAC § 14-003.02.

002.04 “Base Year” means the plan year immediately preceding the capping period.

002.05 “Board” or “PERB” shall mean the Nebraska Public Employees Retirement Board.

003 Conventions for Calculation of Final Average Compensation or Final Average Monthly Compensation

003.01 DETERMINATION OF 12-MONTH PERIODS.

003.01(a) The calculation of a School Plan member’s final average compensation shall commence by dividing the entirety of the member’s service with all public schools into a succession of 12 month periods, with the last such period ending the month during which the member’s final compensation date occurs.

003.01(b) The calculation of a Patrol Plan member’s final average monthly compensation shall commence by dividing the entirety of the member’s service with the Nebraska State Patrol into a succession of 12 month periods, with the last such period ending the month during which the member’s compensation is paid.

003.01(c) For example, and illustrative purposes only, if a member's final compensation date occurs during August of a given year, the member's service shall be divided into a series of the 12-month periods, each of which shall begin with the month of September and end with the month of August.

003.02 ADJUSTMENT OF COMPENSATION RECEIVED DURING THE CAPPING PERIOD. Solely for purposes of calculating a member's final average compensation or final average monthly compensation, as applicable, the compensation received by a member during the capping period shall be limited by excluding the portion, if any, of such member's compensation for a plan year that exceeds the member's compensation for the preceding plan year, as adjusted below, by more than eight percent. The capping period begins with the first year following the base year and ends with the most recent year. Such limitation of compensation during the capping period shall be calculated as follows:

003.02(a) Compensation for the first year of the capping period shall be equal to the lesser of:

003.02(a)(i) the member's compensation for such year; or

003.02(a)(ii) an amount equal to the member's compensation for the base year multiplied by 108%.

003.02(a)(iii) This amount is referred to as the member's adjusted compensation for the first year of the capping period.

003.02(b) Compensation for the second year of the capping period shall be equal to the lesser of:

003.02(b)(i) the member's compensation for such year; or

003.02(b)(ii) an amount equal to 108% of the lesser of:

003.02(b)(ii)(A) the member's compensation for the first year of the capping period; or

003.02(b)(ii)(B) the member's adjusted compensation for the first year of the capping period.

003.02(b)(iii) This amount is referred to as the member's adjusted compensation for the second year of the capping period.

003.02(c) Compensation for the third year of the capping period shall be equal to the lesser of:

003.02(c)(i) the member's compensation for such year; or

003.02(c)(ii) an amount equal to 108% of the lesser of:

003.02(c)(ii)(A) the member's compensation for the second year of the capping period; or

003.02(c)(ii)(B) the member's adjusted compensation for the second year of the capping period.

003.02(c)(iii) This amount is referred to as the member's adjusted compensation for the third year of the capping period.

003.02(d) Compensation for the fourth year of the capping period shall be equal to the lesser of:

003.02(d)(i) the member's compensation for such year; or

003.02(d)(ii) an amount equal to 108% of the lesser of:

003.02(d)(ii)(A) the member's compensation for the third year of the capping period; or

003.02(d)(ii)(B) the member's adjusted compensation for the third year of the capping period.

003.02(d)(iii) This amount is referred to as the member's adjusted compensation for the fourth year of the capping period.

003.02(e) Compensation for the fifth year of the capping period shall be equal to the lesser of:

003.02(e)(i) the member's compensation for such year; or

003.02(e)(ii) an amount equal to 108% of the lesser of:

003.02(e)(ii)(A) the member's compensation for the fourth year of the capping period; or

003.02(e)(ii)(B) the member's adjusted compensation for the fourth year of the capping period.

003.02(b)(iii) This amount is referred to as the member's adjusted compensation for the fifth year of the capping period.

003.03 COMPUTATION OF FINAL AVERAGE COMPENSATION OR FINAL AVERAGE MONTHLY COMPENSATION. After determining the twelve-month (12-month) periods pursuant to 303 NAC § 14-003.01 and adjusting compensation for the capping period pursuant to 303 NAC § 14-003.02, final average compensation or final average monthly compensation, as applicable, shall be computed as follows:

003.03(a) School Plan Members

003.03(a)(i) For an individual who became a School Plan member before July 1, 2013, and who has thirty-six months of compensation or more,

NPERS shall compare all of the 12-month periods during the member's service to determine the three 12-month periods during which the member's compensation (including any adjustments pursuant to 303 NAC § 14-003.02) was the greatest. The total amount of such compensation for such three 12-month periods shall be divided by thirty-six. The result of such calculation shall be the member's final average compensation.

003.03(a)(ii) For an individual who became a School Plan member before July 1, 2013, and who has less than thirty-six months of compensation, the sum of the member's total compensation in all months of creditable service as a school employee shall be divided by the member's total number of months of creditable service. The result of such calculation shall be the member's final average compensation.

003.03(a)(iii) For an individual who became a School Plan member on or after July 1, 2013, and who has sixty months of compensation or more, NPERS shall compare all of the 12-month periods during the member's service to determine the five 12-month periods during which the member's compensation (including any adjustments pursuant to 303 NAC § 14-003.02) was the greatest. The total amount of such compensation for such five 12-month periods shall be divided by sixty. The result of such calculation shall be the member's final average compensation.

003.03(a)(iv) For an individual who became a School Plan member after July 1, 2013, and who has less than sixty months of compensation, the sum of the member's total compensation in all months of creditable service as a school employee shall be divided by the number of the member's total months of creditable service. The result of such calculation shall be the member's final average compensation.

003.03(b) Patrol Plan members

003.03(b)(i) For an individual who became a Patrol Plan member on or after July 1, 2016, and who has sixty months of compensation or more, NPERS shall compare all of the 12-month periods during the member's service to determine the five 12-month periods during which the member's compensation (including any adjustments pursuant to 303 NAC § 14-003.02) was the greatest. The total amount of such compensation for such five 12-month periods shall be divided by sixty. The result of such calculation shall be the member's final average monthly compensation.

003.03(b)(ii) For an individual who became a Patrol Plan member on or after July 1, 2016, and who has less than sixty months of compensation, the sum of the member's total compensation in all months of creditable service as a member of the Nebraska State Patrol shall be divided by the member's total number of months of creditable service. The result of such calculation shall be the member's final average monthly compensation.

004 Consistency of Reporting; Annualization, Proration, and Reallocation of Compensation

004.01 A member's retirement benefit is not to be enhanced or reduced solely as a result of (a) inconsistent timing in the payment or reporting of compensation by the member's employer or (b) an irregular work schedule. Therefore, to ensure consistent treatment of members of the same plan, NPERS shall, when the facts and circumstances dictate:

004.01(a) plot a member's monthly compensation in a consistent manner to account for inconsistent or untimely reporting or payment of compensation by the member's employer; and/or

004.01(b) annualize, prorate, or reallocate a member's reported compensation.

004.02 Circumstances that may warrant proration, annualization, or reallocation of a member's compensation include, but are not limited to:

004.02(a) The member's termination date is prior to the end of a pay period;

004.02(b) The member's termination date is prior to the contract end date;

004.02(c) There are gaps in the member's creditable service, especially during the capping period;

004.02(d) The member's retirement date does not coincide with the end of a plan year;

004.02(e) The member receives simultaneous payments of compensation for full-time employment from more than one employer covered by the plan;

004.02(f) Successive employers report payment of compensation to the member on incompatible schedules; or

004.02(g) Other facts and circumstances that artificially distort the calculation of either the member's compensation during the capping period or the member's final average compensation or final average monthly compensation, as applicable.

004.03 NPERS shall obtain from the member's employer all information necessary to clarify and contextualize the compensation reported by the employer.

004.04 In the event that a member's reported compensation is subject to proration, annualization, or reallocation, NPERS shall include a detailed analysis and explanatory spreadsheet in the member's file reflecting the member's actual retirement calculation.

005 Covered Compensation

005.01 Under no circumstances shall an individual who became a School Plan member before July 1, 2013, receive a retirement benefit based upon a final average

compensation that includes compensation encompassing more than thirty-six (36) months of creditable service.

005.02 Under no circumstances shall an individual who became a School Plan member on or after July 1, 2013, receive a retirement benefit based upon a final average compensation that includes compensation encompassing more than sixty (60) months of creditable service.

005.03 Under no circumstances shall an individual who became a Patrol Plan member on or after July 1, 2016, receive a retirement benefit based upon a final average monthly compensation that includes compensation encompassing more than sixty (60) months of creditable service.

ENABLING LEGISLATION:

NEB. REV. STAT. §§ 79-902, 79-904, 79-934, 81-2019, 81-2026, and 84-1503.